DOCKET NO.: CV-14-6023180S	**:**	**SUPERIOR COURT**
ROBIN SHERWOOD and GREG HOELSCHER	**:**	**J.D. OF STAMFORD**
V.	**:**	**AT STAMFORD**
STAMFORD HEALTH SYSTEM, INC. D/B/A STAMFORD HOSPITAL	**:**	**October 14, 2014**

OBJECTION TO COMPLEX DOCKET TRANSFER

Stamford Health System, Inc. ("Stamford Hospital"), by its counsel, Neubert, Pepe & Monteith, P.C., respectfully submits this Objection to plaintiff's request to transfer this matter to the Complex Docket in Waterbury.

ARGUMENT

Plaintiff has asserted a single count complaint against Stamford Hospital based on Connecticut's Product Liability Act. There are no claims against the manufacturer of the product. A community physician, Dr. Hines, used Stamford Hospital's operating room and performed surgery on Ms. Sherwood. He implanted vaginal mesh into Ms. Sherwood although the Complaint does not specify what product was used.

Unlike the two cases on the complex docket, which each have more than a dozen claims and involve two manufacturers and a doctor, this is a simple case. Stamford Hospital has almost no documents given the age of the surgery nor does it have any witnesses or expertise regarding this product. It ordered the mesh and it was placed on a table for the community physician to use in surgery. In addition, Stamford Hospital has filed a motion to strike and this is likely to dispose of the case because hospitals provide a service, they are not product sellers and are not

liable under the Connecticut Product Liability Act.[1] At a minimum, it makes no sense to transfer this action before the pending Motion to Strike is decided. The other cases involved mesh manufacturers and millions of documents. This case is much simpler.

This case is also different than the other cases in that the surgery occurred (as alleged in the Complaint), in 2006. The statute of limitations expired more than five years ago. If the case had merit, plaintiffs would have sued all of the relevant parties.

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[1] See Zbras v. St. Vincent's Medical Center, 91 Conn. App. 289 (2005) (A surgeon used pedicle screws in a surgery at St. Vincent's Medical Center and the patient sued St. Vincent's under the CPLA as a product seller. The Superior Court granted summary judgment for St. Vincent's holding that "hospitals are not engaged in the business of selling equipment utilized in operative procedures but rather are engaged in the business of providing medical services, and therefore the defendant is not subject to the product liability act for providing the TSRH hardware." That opinion was "Affirmed" by the Appellate Court holding that "defendant can bill for goods provided incidental to surgery without being the business of selling goods." In affirming the Superior Court's decision, the Appellate Court also found that the "transaction in this case, a surgery, clearly was labeled a service rather than the sale of a product.") The Zbras holding is consistent with all of the other precedent.

As one judge observed last year, "[f]ollowing Zichichi[1] there have been what appears to be a **unanimous chorus** of appellate and trial court decisions, either barring product liability claims against hospitals or defining 'product' in a manner hospitable to hospitals." (Emphasis added). O'Dell v. Greenwich Healthcare Services, Inc., 2013 Conn. Super LEXIS 972, *7 (Conn. Super. Ct. April 25, 2013).[1] See also, Ferguson v. EBI Medical Sys., 1995 Conn. Super. LEXIS 2228, *11 (Conn. Super. Ct. Aug. 1, 1995)(Dismissing CPLA claim against Lawrence Memorial Hospital for injury arising from surgery using Pennig wrist fixators "because hospitals are providers of medical services rather than sellers of the products and equipment they furnish." Citing cases going back to 1980, the Court found that "every hospital-defendant that has challenged a complaint brought against it under the [C]PLA by means of a motion for summary judgment was successful on that motion."); Wallace v, Gerard Medical, Inc. 2003 Conn. Super LEXIS 1114, *12 (Conn. Super Ct. April 4, 2003)(Hospital not liable for defective porta cath under the CPLA because "a hospital is not a product seller pursuant to § 52-572m(a), but rather is engaged in providing a medical service"); Herrick v. Middlesex Hospital, 2005 Conn. Super LEXIS 1672, *19 (Conn. Super. Ct. June 27, 2005)(Hospital not product seller under CPLA for defective Russell-Taylor femoral locking nail inserted into plaintiff during surgery); Zelle v. Bayer Corp, 2012 Conn. Super LEXIS 892 (Conn Super. Ct. February 2, 2012)(Court granted summary judgment in favor of Danbury Hospital which used allegedly defective product as part of magnetic imaging test because it was not a product seller); O'Dell v. Greenwich Healthcare Services, Inc., 2013 Conn. Super LEXIS 972, *13 (Conn. Super. Ct. April 25 2013)("[D]elivery of neuraxion medication to O'Dell was part of the medical services rendered by Greenwich Hospital for pain therapy . . . . This was a service under the overwhelming Connecticut case law.").

The Request for Transfer should therefore be denied.

DEFENDANT,
STAMFORD HEALTH SYSTEM, INC.,
D/B/A STAMFORD HOSPITAL

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CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was mailed, postage prepaid, by U.S. Mail, this 14th day of October, 2014, to the following counsel of record:

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